



EXHIBIT

2/2/07

340

CITY OF MISSOULA  
POLICE DEPARTMENT*"Professionalism With Pride"*

February 2, 2007

To: House Judiciary Committee –

Chairwoman Diane Rice, Ron Stoker, Dave Gallik, Douglas Cordier, Robyn Driscoll, Bob Ebinger, George Everett, Julie French, Rick Jore, Krayton Kerns, Roger Koopman, Deb Kottel, Tom McGillvray, Jesse O'Hara, Ken Peterson, Holly Raser, and John Ward

Reference: Opposition to HB 0340

Chairwoman Rice and Committee Members,

My name is Mark Muir and I am the Assistant Chief of Police in the City of Missoula. I testified today before you in opposition to HB 340 and hope to provide you with additional insight as to why I requested your action to table the bill at this time.

In general, the City of Missoula and myself oppose this bill on a number of different issues. The bill is wrought with unneeded duplication of rights, responsibilities and privileges already bestowed upon law-abiding citizens. While the sponsor and creators of the bill hope to receive your approval on the assertion that this will preserve or clarify rights and laws pertaining to self-defense, those same rights are already clearly defined in Montana's Constitution and in Montana's Codes Annotated, Title 45, Chapter 3, Part 1 – Justifiable Use of Force.

The New Section 2 suggests that presently one MUST flee or summon help prior to acting in defense of one's own person. Quite the contrary is true, given the accepted legal principles of Imminent Jeopardy and Preclusion, the standards by which reasonable deadly use of force must be measured. Preclusion can be stated as the elimination of reasonable alternatives given the set of facts at the time. Retreat or flight from danger is not a given requirement, just a potential option in some cases.

We see no benefit to New Section 3, which statutorily creates a question about what is "a harmless defensive purpose?" Consider for one second your own feelings about a scenario involving an angered driver on the roadways: A person, clouded by road rage, who feels your driving is threatening their personal safety through your driving behavior gets out of their car at the next red light and "harmlessly" approaches your car with firearm in his hand. Do we want to allow such behavior as a matter of practicality?

As to New Section 4, the obligation is already there for law enforcement to fully investigate any claim of self-defense of any type and to disclose all evidence including that which helps the defendant, commonly referred to as exculpatory evidence.

New Section 5 makes no assertion of who the court would direct to pay for any awards upon dismissal or finding of not guilty.

Many investigations involving the use of firearms, either aggressively or in acts of self defense require substantially longer than the time periods required in this bill before a charging decision can be made. Absent that, if the weapon is evidence of any type it must be retained and this entire section has technical difficulties where it would conflict with other statutes that are not amended in this bill.

New Sections 8 and 9 are both infringements on personal/private property rights of owners or rightful controllers of private property. An owner of any property, business should have the right to assert rules for their property.

The bill inappropriately proposes changes to the current laws restricting concealed carry of weapons outside one's private domain. Article II, Section 12 of the Montana Constitution specifically asserts that there is no express right to permit carriage of concealed weapons. To suggest that persons could legally carry a firearm concealed upon their person without permit up until "just prior to using it in a crime" is tantamount to revising our DUI laws to read that it is permissible to be an intoxicated driver "until just prior to getting into a crash" involving a traffic violation that could lead to injury or even death.

The last major concern we express is that of use of force in making an arrest by a private person. This amendment is unnecessary due to the wording already present in MCA 45-3-106:

**45-3-106. Use of force to prevent escape.** (1) A peace officer or other person who has an arrested person in his custody is justified in the use of such force to prevent the escape of the arrested person from custody as he would be justified in using if he were arresting such person.

Thank you for your time and please vote **against** passage of this bill. It is not in the best interests of our citizens or our criminal justice system.

Sincerely,

Mark Muir, Assistant Chief of Police  
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